

ACLU of Virginia

530 East Main Street, Suite 310 Richmond, Virginia 23219 (804) 644-8022

July 8, 2009

James B. Alcorn, Esq.
Policy Advisor
State Board of Elections
1100 Bank Street, First Floor
Richmond, Virginia 23219

RE: Comments on Draft Residency Rules

Dear James:

Following are the ACLU of Virginia's comments on the draft residency rules to be considered at tomorrow's State Board of Elections meeting.

In general, we think that this document will be helpful in resolving many of the difficulties associated with determining residency. We are particularly pleased with the removal of rules indicating that "[a] person with specific intent to abandon his current location at a fixed date in the future" or a college student who intends to "return to his former home" after graduation, may not establish domicile in their current locations. However, significant concerns remain.

First, we continue to be concerned with the requirement that, in order to acquire a domicile, a person must intend to remain "for an unlimited period of time." Section 2(b). We continue to support the language set forth in an earlier, which stated that "a person must intend to make that place his home for the time at least." That language reflects the understanding of domicile set forth in such cases as *Ramey v. Rockefeller*, 348 F.Supp. 780, 788 (E.D.N.Y.1972) (quoting the Restatement (Second) of the Conflict of Laws § 18 (1971)), and recognizes that a person may have a series of homes, each for a finite period of time. By contrast, the phrase "an unlimited period of time" implies that the person intends never to move from the location, which has never been a prerequisite for domicile.

We continue to object to the "supplemental question" set forth in Section 14(b): "Do you have a specific plan to move away from this county or city at a fixed date in the future?" This question will inevitably pose conflicts with Section 2(b), which provides that an intent to leave "upon the happening of a future contingency," including graduation or a change of job status. Most students, for example, do not view graduation as a "contingency," but a certainty. If asked whether they plan to leave the locality at a fixed date in the future, they would not say "yes," not "yes, if I graduate." The same may be true of a person with a long-term, but finite, work assignment in a particular locality. Moreover, the rules do not address what is to happen if an applicant answers "yes" to this question.

We also continue to object to Section 13(a) and (b), which provide that the registrar shall request more information – and deny the application if it is not provided – when the

residence address is in a different locality from the mailing address, or if “[t]he applicant provides a residential address that cannot receive mail, or from which mail sent by the registrar’s office is returned.” A mailing address is not a legal requirement for the right to vote. Moreover, receiving mail outside a locality is not inconsistent with having a domicile within that locality, especially for college students, who may continue to use their parents’ addresses for mail. The determinative address is the place where the applicant resides, not where he receives mail.

Finally, we object to Section 15(d), which provides that supplemental information must be received by the close of registration. Requests for additional information may result in some voters, through no fault of their own, having their registration delayed until after the deadline. For example, the registrar may incorrectly believe the address given to be commercial address. Or an application may cause a conflict in VERIS because of a problem with a previous applicant’s information was incorrect. We therefore continue to suggest that the regulations specify that if that application is ultimately approved, the registrant shall be registered as of the date that his application was initially received by the registrar or state-designated voter registration agency, or, if mailed, on the date of postmark.

Sincerely,

Rebecca K. Glenberg